FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 23 1942
CHARLES ELMORE CROPLEY
CLERK

No. 738

In the Supreme Court of the United States

OCTOBER TERM, 1941

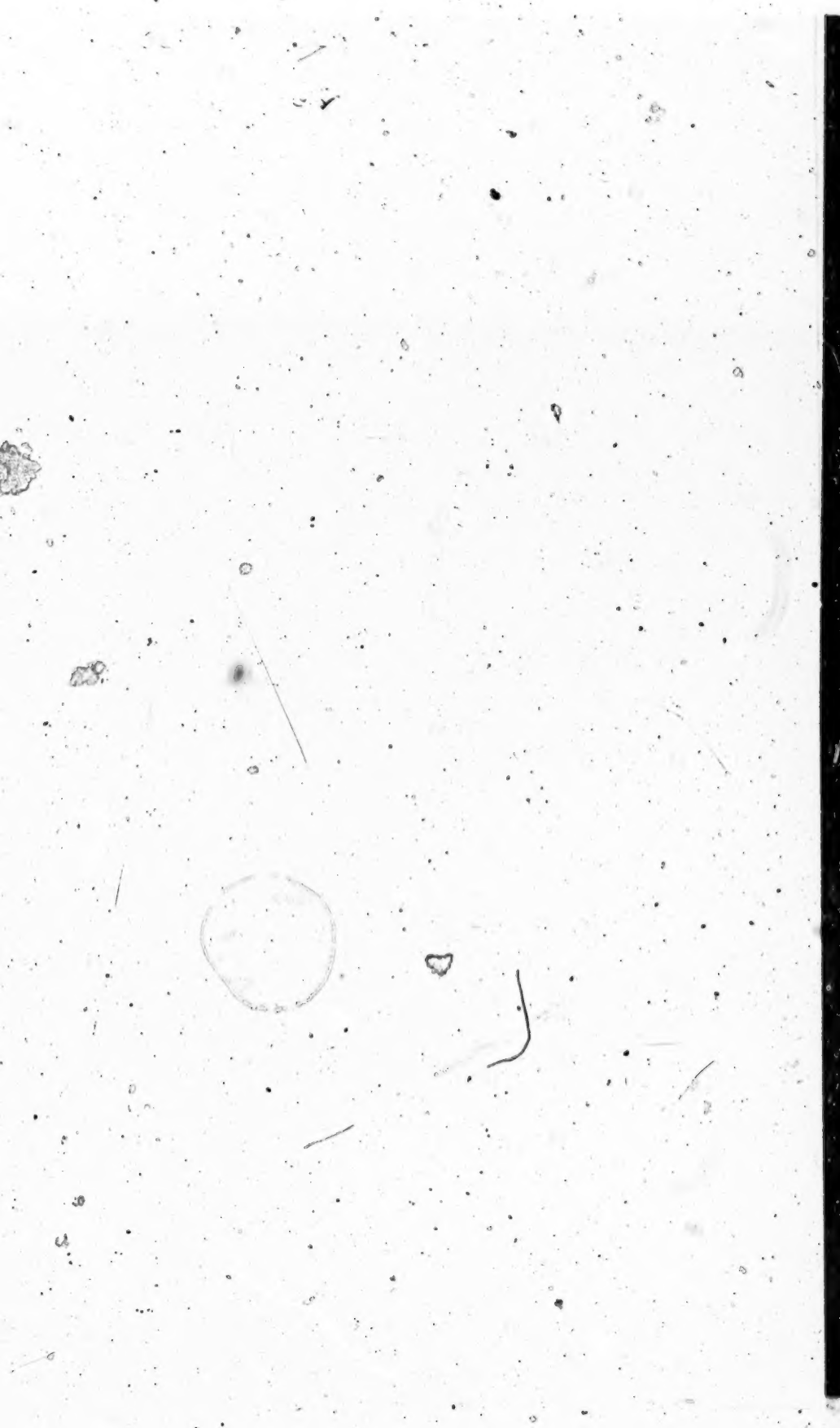
THE UNITED STATES OF AMERICA, PETITIONER

v.

CITIZENS' LOAN & TRUST COMPANY, ADMINISTRATOR DE BONIS NON OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES



INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statutes involved	2
Statement	3
Specification of errors to be urged	8
Summary of argument	8
Argument:	
I. There is no legislative authority for increasing the amount payable under Section 303, as amended, because of delay in payment	10
II. The sum awarded to the respondent by the Court of Appeals does, in fact, include interest on a past due obligation of the United States, contrary to the rule stated in *United States* v. *Worley*, 281 U. S. 339	17
III. There are no cogent reasons why the consistent, long-continued administrative practice should be overturned in this case	18
Conclusion	20
Appendix	21

CITATIONS

Cases:	
Kerr v. *United States*, 108 F. (2d) 585	4
New York Chicago & St. Louis R. R. Co. v. *Frank*, No. 15, present term	19
Norwegian Nitrogen Co. v. *United States*, 288 U. S. 294	19
United States v. *Jackson*, 280 U. S. 183	19
United States v. *Lee*, 101 F. (2d) 472	16
United States v. *Madigan*, 300 U. S. 500	19
United States v. *Moore*, 95 U. S. 760	19
United States v. *Worley*, 281 U. S. 339	10, 15, 17, 18
Statutes:	
Sections 400 and 402 of the War Risk Insurance Act of October 6, 1917 (c. 105, 40 Stat. 409–410)	21
Sections 14, 15, and 19 of the Act of December 24, 1919 (c. 16, 41 Stat. 376–377)	24
Section 26 of the Act of August 9, 1921 (c. 57, 42 Stat. 156)	24, 26
Section 303 of the World War Veterans' Act of June 7, 1924 (c. 320, 43 Stat. 625)	26

450012—42——1

Statutes—Continued.	Page
Section 303 of the World War Veterans' Act, as amended by the Act of March 4, 1925 (c. 553, 43 Stat. 1310; 38 U. S. C. 514)	2, 27
Miscellaneous:	
Bulletin No. 1, Bureau of War Risk Insurance	23
Rule 76, Federal Rules of Civil Procedure	3
Sprague, "The Accountancy of Investment"	11
Lock and Scott, "Arithmetic for Schools"	11
Karpinski, Benedict, and Calhoun, "Unified Mathematics"	11

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 738

THE UNITED STATES OF AMERICA, PETITIONER

v.

CITIZENS' LOAN & TRUST COMPANY, ADMINISTRATOR DE BONIS NON OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED [1]

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court of the United States for the District of Columbia rendered no opinion. Its judgment (R. 30–31), however, was in accordance with the report of a commissioner of that court (R. 10–30), to whom the case had been referred

[1] Substituted as respondent for Elizabeth Kerr, Administratrix, who died subsequent to the judgment of the Court of Appeals.

(R. 9–10). The opinion of the Court of Appeals for the District of Columbia (R. 36–38) is reported in 122 F. (2d) 638.

JURISDICTION

The judgment of the Court of Appeals was entered June 30, 1941 (R. 39). A petition for rehearing (R. 39–40) was denied August 11, 1941 (R. 46). The petition for a writ of certiorari was filed November 10, 1941, and was granted December 15, 1941 (R. 48). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, under Section 303, World War Veterans' Act, 1924, as amended, the amount of the Government's obligation to the estate of an insured under a contract of yearly renewable term insurance is increased by delay in its payment.

STATUTES INVOLVED

Section 303 of the World War Veterans' Act of June 7, 1924, c. 320, 43 Stat. 607, 625, as amended by Section 14 of the Act of March 4, 1925, c. 553, 43 Stat. 1302, 1310 (38 U. S. C. 514), provides, in pertinent part, as follows:

> SEC. 14. Section 303 of the World War Veterans' Act, 1924, approved June 7, 1924, is hereby amended to read as follows:
>
> "SEC. 303. If no person within the permitted class be designated as beneficiary for

> yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award: * * *.

The complete section, as amended and as originally enacted, other relevant statutory provisions, and a portion of Treasury Bulletin No. 1, containing the form of the contract of yearly renewable term insurance, appear in the Appendix, *infra*, pp. 21–28.

STATEMENT

The facts are not in dispute.[2] Yearly renewable term insurance for $10,000 was issued to Joseph Kelly Kerr, who died on November 8, 1919. The designated beneficiary was Eugene Kerr (R. 1). A claim for the policy's proceeds was denied by the Bureau of War Risk Insurance on March 6, 1920, upon the ground that the policy was not in effect when the insured died (R. 25). The designated beneficiary died on June 24, 1924 (R. 1).

---

[2] The case was heard in the Court of Appeals on an agreed statement of the case under Rule 76 of the Federal Rules of Civil Procedure (R. 1–34).

Suit on the policy was instituted on November 6, 1925 (R. 25), by Elizabeth Kerr.[3] The District Court held that the insurance was not in force when the insured died, and entered judgment for the United States on March 27, 1939 (R. 2). The Court of Appeals for the District of Columbia reversed on December 4, 1939. (*Kerr* v. *United States*, 108 F. (2d) 585.)

The present controversy arose in the District Court in connection with the entry of judgment pursuant to the reversal by the Court of Appeals. It relates solely to the proper interpretation of Section 303 of the World War Veterans' Act of June 7, 1924, as amended March 4, 1925, in the determination of the amount payable to the estate of the insured, Joseph Kelly Kerr.[4] The judgment

---

[3] The suit was brought by Elizabeth Kerr individually, but by a number of amendments to the complaint, not incorporated in the present record, she was made party-plaintiff in the capacities of administratrix of the estate of the insured, Joseph Kelly Kerr, and of the estate of the beneficiary, Eugene Kerr (R. 1).

[4] The insured's $10,000 contract originally provided for the payment of 240 monthly installments of $57.50 each. (Bulletin No. 1, Appendix, *infra*, pp. 23–24.) Section 303 altered this method of payment only with respect to benefits payable to the estate of an insured. Accordingly, Eugene Kerr, the designated beneficiary, became entitled to receive $57.50 on November 8, 1919, the date of the insured's death, and the same amount on the corresponding day of each succeeding month until his death on June 24, 1924. Thus, 56 installments of $57.50 each, aggregating $3,220, accrued in favor of Eugene Kerr and were properly awarded to his estate in the judgment of the District Court (R. 2, 30, 31). This portion of the judgment has been paid and is not in dispute.

of the District Court first awarded to this estate the amount of $10,580[5] (R. 2). The Government moved to correct the judgment by substituting the amount of $8,234[6] and by including a set-off in the amount of $6.50 for an unpaid premium for the month in which the insured died (R. 3–4). After reference of the matter to a commissioner (R. 9–10), who recommended that the Government's motion be granted (R. 30), the District Court amended the judgment by awarding $8,234, less $6.50, for a net recovery of $8,227.50 (R. 30–31).[7]

The Court of Appeals reversed, holding that $10,580 was payable to the estate of the insured (R. 36–38). It regarded as decisive the fact that the Government's liability had not been discharged earlier.

Stating that the present case "appears to be another instance of that frequently recurring situation in the law where the legislators had certain specific problems in mind but not this one when they passed an amendment" (R. 37), the court

---

[5] $10,580 is the sum of 184 installments of $57.50 each. The 240 installments originally provided by the insured's contract would be reduced to 184 upon a deduction of the 56 installments which accrued in favor of the beneficiary during his lifetime.

[6] $8,234 is the present value of 184 monthly installments of $57.50 under a contract of yearly renewable term insurance. (R. 29; see footnote 10, *infra*, p. 11.)

[7] The deduction of the unpaid premium is not in dispute. Accordingly, the amount referred to hereinafter as admitted by the Government to be payable will be stated as $8,234.

bases its decision upon the "apparent rationales of the method of computation" prescribed by Congress in Section 303 of the Act of June 7, 1924, and the amendment of March 4, 1925 (R. 37).

The court points out that, prior to June 7, 1924, yearly renewable term insurance was paid to the estate of an insured in monthly installments, and reasons that when, on that date, Congress provided for payment in one sum, the amount was "set at the present value of the instalments rather than the total of what the instalments would be * * * because the recipient immediately obtained the full use of the money" (R. 37).

The court also points out that the 1925 amendment, in adding the clause "said value to be computed as of date of last payment made under any existing award", "was passed undoubtedly to resolve problems like that of the Cody case" (R. 37), in which the 1924 Act had taken away from the estate of an insured the benefit of interest embodied in the installments already paid.*

* The opinion states concerning the Cody case (R. 36): "At one time the government met such an obligation [to the estate of an insured] by the continuance of the monthly payments. The statute was changed on June 7, 1924, retroactive to October 6, 1917, authorizing a single lump sum payment. The amount of this single payment was figured at the present value of the remaining instalments.

"Under this state of the law the Veterans' Bureau was presented with the Cody case. Cody became permanently disabled on November 1, 1918. He received monthly benefits until his death on June 5, 1922. His executor received an award for instalment payments till October 31, 1938. These

The court apparently reasons that since Congress had thus manifested an intention to allow the interest embodied in installments actually awarded, an intention also to allow installment-interest in cases where the one sum payment provided by Section 303 had been delayed; should be regarded as implied.[9] Therefore, while recognizing that "here there was no last payment under an existing award" within the meaning of the 1925 amendment (R. 38), the Court of Appeals nevertheless concludes (R. 38):

> While the statute makes its express statement in terms of the positive in a situation where there is a last payment, it also affords the guide for computation in this case.

---

were paid until June 7, 1924, the date of the lump sum statute. Under that statute it was determined that the value of the lump sum payment was to be figured as of the date of Cody's death. That amount was ascertained and then the amount of the instalments already paid was deducted.

"Then the Veterans' Bureau sponsored an amendment which became law on March 4, 1925, providing that the present value of the remaining instalments should be figured from the time of the last payment under any existing award. The Cody case was redetermined in accordance with this statute."

[9] The opinion may be construed as reflecting the view (R. 37) that the problem of the Cody case, resolved by the 1925 amendment, arose from the fact that the one sum payment, i. e., the present value of the installments unpaid on the date of the death of the insured, had been delayed. If this was the court's view, it was obviously erroneous, we submit. See Discussion, *infra*, pp. 12–14, and footnote 11, *infra*, pp. 12–13.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

(1) In holding that Section 303 of the World War Veterans' Act, 1924, as amended, should not be applied literally to the facts of this case because of delay on the part of the Government in paying the present value of 184 installments of yearly renewable term insurance due and payable to the estate of the insured as of June 24, 1924.

(2) In holding that the amendment of March 4, 1925, to Section 303, provided a guide to the computation of the Government's liability in this case which would permit the fixing of that liability at $10,580.

(3) In holding that the liability of the United States due and payable as of 1924 in the sum of $8,234 has now become a liability of $10,580.

(4) In allowing, in effect, interest upon a past due obligation of the Government under a contract of yearly renewable term insurance.

(5) In overturning a consistent and long-established administrative practice not clearly erroneous.

(6) In reversing the judgment of the District Court.

SUMMARY OF ARGUMENT

I. Delay in payment does not increase the obligation of the United States to the estate of an insured under Section 303. That section contains no express provision for such an increase and none exists elsewhere.

The court below erroneously assumes that the "rationales of the method of computation in the 1924 and 1925 amendments" justify its conclusion that an obligation of $8,234 as of June 1924, has become an obligation of $10,580.

Section 303, as worded in the Act of 1924, prescribed payment to the estate of the insured of the "present value" of the installments unpaid, rather than the installments themselves. Since interest upon the amounts deferred in payment had been allowed when the principal obligation of the United States had been converted into monthly installments, the installment interest was, of course, eliminated when the unpaid installments were reconverted into one sum.

The 1925 amendment was enacted for the limited purpose of avoiding a retroactive withdrawal under the 1924 Act of the interest embodied in installments previously paid.

Neither the Act of 1924, nor the amendment of 1925, indicates in any respect an intention to allow interest upon a past due obligation of the United States because of delay in its payment, and the fact that the 1925 amendment made a single exception to the 1924 Act in cases in which installment payments had been made to an estate prior to 1924, invokes the presumption that Congress did not intend an exception in cases like the present.

II. The decision of the court below allows interest upon a past due obligation of the United States,

contrary to *United States* v. *Worley*, 281 U. S. 339.

III. The decision of the court below is opposed to a consistent, long-continued administrative construction embodied in the adjudication of more than 50,000 cases. Cogent reasons are required for disregarding an administrative construction under such circumstances, and none is here shown.

ARGUMENT

I

THERE IS NO LEGISLATIVE AUTHORITY FOR INCREASING THE AMOUNT PAYABLE UNDER SECTION 303, AS AMENDED, BECAUSE OF DELAY IN PAYMENT

Contracts of yearly renewable term insurance were authorized by Section 400 War Risk Insurance Act of October 6, 1917. (Appendix, *infra*, p. 21.) The terms and conditions of the contracts were embodied in Bulletin No. 1, Bureau of War Risk Insurance (Appendix, *infra*, pp. 23–24), issued October 15, 1917, pursuant to Section 402, War Risk Insurance Act (Appendix, *infra*, pp. 21–22). Bulletin No. 1 provided that the insurance should be paid in monthly installments at the rate of $5.75 for each $1,000 of insurance, "the equivalent, when paid for 240 months, of the sum insured, on the basis of interest at the rate of 3½ percent per annum."

Section 303 was enacted on June 7, 1924, for the purpose, as recognized by the court below (R. 36–37), of having the obligation of the United

States to the estate of an insured under a contract of yearly renewable term insurance paid in one sum rather than in monthly installments as originally provided. Since the total amount paid under the contract had been increased beyond the face value of the contract as an incident of the installment method of payment (i. e., as the result of the allowance of interest on the amounts required by the installment method to be deferred in payment), Congress, of course, directed that this increase be eliminated when it provided that payment be made in one sum. The elimination of the installment interest was accomplished by the direction that "the present value" [10] of the installments be paid.

---

[10] The Director of Insurance of the Veterans' Administration has defined "present value" as follows: "The present or commuted value of a monthly annuity certain due, that is, a series of payments made at the beginning of each month for a specified number of months, is that amount which, if placed at interest at a certain assumed rate, will provide for the payment of each installment as it falls due. When the last installment falls due the amount in the fund will exactly equal this installment and the fund will be exhausted. Thus it will be seen that each monthly payment after the first is made up partly of principal and partly of interest. When a series of payments is given and it is desired to obtain the commuted or present value of the series, each payment falling due after a certain date is discounted back to that date and the sum of the discounted values is the present or commuted value of the series of installments." (R. 29.) Cf. Sprague "The Accountancy of Investment" (Perrine Revision, 1919), p. 32; Lock and Scott "Arithmetic for Schools" (American edition, 1916), p. 198; Karpinski, Benedict and Calhoun, "Unified Mathematics" (revised, 1922), p. 184.

Since Section 303 was made retroactive to October 6, 1917, and since the word "thereafter" in the section obviously related to the death of the insured or other person specified in the statute, all installments payable to the estate of an insured were required by the 1924 Act to be reduced to present value. The effect of the legislation, therefore, was to eliminate installment interest even in cases in which installment awards had been made under the authority of earlier legislation. Such was the interpretation of the General Counsel of the Veteran's Bureau in the case of Arthur O'Neill Cody (R. 25–26) and, as recognized by the Court of Appeals (R. 37), the 1925 amendment was passed to resolve problems like that of the *Cody* case.

The amendment avoided a retroactive withdrawal of the interest embodied in installments previously paid by inserting the clause "said value to be computed as of date of last payment made under any existing award." This is true because installment payments under prior awards were thus excluded from reduction to present value. In other words, the date as of which the present value of the monthly installments was computed determined the number of installments reduced to present value.[11]

---

[11] To illustrate the effect of the 1924 Act and of the 1925 amendment, utilizing the facts of the Cody case:

If an insured, having $10,000 yearly renewable term insurance in force, died on June 5, 1922, after receiving 44 installments by reason of total permanent disability and was

The amendment obviously did not apply to any case except one in which an installment award had been made to the estate of an insured under the authority of legislation antedating Section 303. (Appendix, *infra*, pp. 24–26.) Section 303, upon its face, both in the 1924 enactment and in the amendment of 1925, relates to the method of making payment to the estate of an insured, and the amendment expressly excludes awards to other beneficiaries from the scope of the section. (Appendix, *infra*, pp. 27–28.) The 1924 enactment directs payment in one sum, determinable by a single stated process of computation which elimi-

---

not survived by anyone within the permitted class, 196 installments, having a present value of $8,634, would remain unpaid as of the date of the death of the insured, and that sum would constitute the whole of the money payable to the estate of the insured under the Act of June 7, 1924, even though 25 installments had been paid to the estate under the authority of legislation in existence prior to Section 303; the sum of the 25 installments would simply be deducted from the $8,634.

However, under the 1925 amendment, the sum of the 25 installments, $1,437.50, already paid to the estate of the insured, would be undisturbed, and the present value of the 171 installments remaining unpaid on the date of last payment under the installment award, $7,784, would be paid, so that the estate would receive an aggregate sum of $9,221.50. Thus, $587.50 represents the difference between computing the present value of the installments payable as of the date of the death of the insured, as required by the 1924 Act, and computing the present value of the installments payable as of the date of last payment made under any existing award, as required by the 1925 Act.

nates installment-interest from the installments embodied in that one sum payment. The 1925 amendment merely excludes from the effect of this process installments paid under the authority of legislation antedating Section 303.

The Court of Appeals recognizes that there is in the statute no express language authorizing installment payments when the one-sum present-value payment prescribed by Section 303 has been delayed. The court, however, erroneously assumes that the "rationales" of the methods of computation prescribed by the statute require the conclusion that the Government's liability should be computed on an installment basis when the one-sum payment, directed by the statute, has been delayed.

(a) The reason for the elimination in the Act of 1924 of installment interest to the estate of an insured was, as shown above, simply the fact of the discontinuance of installment payments to such an estate, and the resultant acceleration of the due date of the whole of the remaining obligation. Interest had been allowed in the process of converting the principal obligation into monthly installments and, consequently, was eliminated when, upon reversing that process, the unpaid monthly installments were, in effect, reconverted into the corresponding portion of the principal obligation. As this Court recognized in *United*

States v. *Worley*, 281 U. S. 339, 343–344, discussed more fully hereinafter (pp. 17–18), "The Act does not provide for the payment of any interest on past due installments. It has been uniformly construed by the Bureau not to allow any. There is nothing in the conduct of the United States in respect of life and disability insurance from which an agreement on its part to pay interest may reasonably be implied." Delay in payment after the due date of the one sum obligation, substituted by the Act of 1924 for the earlier installment obligation, is no more a reason for an allowance of interest than is delay in payment after the due dates of the installment obligation.

Congress could not have been unaware of the fact that there would be delay in payment in many cases under Section 303—as well as delay in the payment of other benefits authorized by the World War Veterans' Act, such as the benefit awarded to the estate of the beneficiary in the instant case. But evidently Congress was unwilling to authorize an increase generally in the obligations payable under the insurance title of the World War Veterans' Act because of delay in payment after the due date of the obligation, and saw no reason why an exception in this respect should be made in favor of the estate of an insured.[12] Indeed there is evidence that Con-

[12] Congress must have recognized that suit under Section 19 of the World War Veterans' Act (38 U. S. C. 445), as in

gress would not have intended discrimination in favor of the estate of an insured and against all living beneficiaries. On July 2, 1926, Congress enacted an amendment to Section 305 of the World War Veterans' Act (48 Stat. 799; 38 U. S. C. 516), which has been judicially recognized as designed to exclude estates from the benefit of insurance revived under that section after the date of the amendment. *United States* v. *Lee*, 101 F. (2d) 472, 474 (C. C. A. 6).

(b) The fact that Congress, in the 1925 Act, manifested an intention to avoid a retroactive withdrawal of the interest embodied in installments paid pursuant to earlier legislation, provides no basis for assuming an intention on the part of Congress to allow installment interest when the one sum obligation, prescribed in Section 303 on a basis necessarily excluding such interest, is delayed in payment. On the contrary, it is, of course, a familiar rule of statutory construction that where the legislature has provided one or more exceptions to

---

this case, would result in long delay in the ascertainment whether any liability on the part of the United States existed and, if so, to whom and in what amount, and hence in the payment of the obligation, if any, found to exist as a result of the litigation. Yet Congress did not, in Section 19 or elsewhere, manifest an intention that any obligation of the United States be increased because of delay in the recognition and payment of the obligation.

the operation of an enactment, it must be presumed to have intended no other exceptions.

II

THE SUM AWARDED TO THE RESPONDENT BY THE COURT OF APPEALS DOES, IN FACT, INCLUDE INTEREST ON A PAST DUE OBLIGATION OF THE UNITED STATES, CONTRARY TO THE RULE STATED IN *UNITED STATES* V. *WORLEY*, 281 U. S. 339

It is not disputed that as of June 24, 1924, the Government was obligated to the estate of the insured in the amount of only $8,234. Although the court below does not purport to so decide, its holding that the same obligation may now be discharged only by the payment of $10,580 necessarily embraces an allowance of interest upon a past due obligation of the Government.

In *United States* v. *Worley*, 281 U. S. 339, 341, this Court stated the rule to be that "the United States will not be required to pay interest except where the liability is imposed by statute or assumed by contract." The only interest assumed by contract or imposed by statute in respect to yearly renewable term insurance is the interest allowed to the due date of each monthly installment when the obligation is discharged by that method. This interest was computed and allowed in the process of converting the obligation into monthly installments. (Described, *supra*, pp. 10, 14.)

But this Court stated in *United States* v. *Worley*, *supra* (pp. 343–344):

> The Act does not provide for the payment of any interest on *past due installments*. It has been uniformly construed by the Bureau not to allow any. There is nothing in the conduct of the United States in respect of life and disability insurance from which an agreement on its part to pay interest may reasonably be implied. [Emphasis supplied.]

It is true, of course, that the quoted language was not directed to the precise question here presented. Nevertheless, it is, we submit, fully applicable in the instant case. Whether or not it thought it was doing so, the court below, in the judgment, did in fact allow interest upon a past due obligation of the United States, contrary to the *Worley* decision.

III

THERE ARE NO COGENT REASONS WHY THE CONSISTENT LONG-CONTINUED ADMINISTRATIVE PRACTICE SHOULD BE OVERTURNED IN THIS CASE

The decision of the court below is opposed to the administrative interpretation and practice adopted by the Veterans Administration and its predecessors from the date of the passage of Section 303, and followed consistently since that time (Letter of the Administrator of Veterans' Affairs, dated July 14, 1941, R. 41–42) in the adjudication of more than

50,000 cases (Letter of the Administrator of Veterans' Affairs, dated November 6, 1941, Pet. 14–15), This construction is entitled to great weight (*United States* v. *Moore*, 95 U. S. 760, 763; *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315), and should not be overturned except for the most cogent reasons (*United States* v. *Jackson*, 280 U. S. 183, 193; *United States* v. *Madigan*, 300 U. S. 500, 505; *New York, Chicago & St. Louis R. R. Co.* v. *Frank*, No. 15, present Term, decided by this Court December 8, 1941). No such reasons have been shown for overruling the administrative construction.

On the contrary, we believe that Congressional approval of the administrative construction of the 1924 Act, as embodied in the opinion of the General Counsel of the Veterans Administration in the Cody case (*supra* p. 12), is manifest. Congress legislated to alter the effect of the statute, as construed administratively, with respect to a limited class of cases when it enacted the 1925 amendment, but has taken no action to avoid the administrative construction in its application to the more than 50,000 cases which have been adjudicated under Section 303 since its amendment in 1925.

Also, the fact alone that in the seventeen years of the statute's existence no previous contention that the administrative construction is erroneous has been made, at least in any reported case, is strong

evidence that no cogent reasons exist for overturning that construction.

CONCLUSION

For the reasons stated, we respectfully submit that the judgment of the Court of Appeals should be reversed and that of the District Court affirmed.

CHARLES FAHY,
Solicitor General.
JULIUS C. MARTIN,
Director, Bureau of War Risk Litigation.
WILBUR C. PICKETT,
KEITH L. SEEGMILLER,
W. MARVIN SMITH,
Attorneys.

MARCH 1942.

APPENDIX

Sections 400 and 402 of the War Risk Insurance Act of October 6, 1917 (c. 105, 40 Stat. 409–410):

SEC. 400. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided.

SEC. 402. That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. The insurance shall not be assignable, and shall not be subject to the claims of creditors of the insured or of the beneficiary. It shall be payable only to a spouse, child, grandchild, parent, brother, or sister, and also during total and permanent dis-

ability to the injured person, or to any or all of them. The insurance shall be payable in two hundred and forty equal monthly installments. * * * All calculations shall be based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum, except that no deduction shall be made for continuous installments during the life of the insured in case his total and permanent disability continues more than two hundred and forty months. Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries, but only within the classes herein provided. If no beneficiary within the permitted class be designated by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured, the insurance shall be payable to such person or persons, within the permitted class of beneficiaries as would under the laws of the State of the residence of the insured, be entitled to his personal property in case of intestacy. If no such person survive the insured, then there shall be paid to the estate of the insured an amount equal to the reserve value, if any, of the insurance at the time of his death, calculated on the basis of the American Experience Table of Mortality and three and one-half per centum interest in full of all obligations under the contract of insurance.

Bulletin No. 1 of the Bureau of War Risk Insurance (United States Veterans' Bureau Regulations and Procedure, pp. 1233–1237) provided in part:

TERMS AND CONDITIONS OF SOLDIERS' AND SAILORS' INSURANCE

OCTOBER 15, 1917.

* * * * *

[Form of policy for $5,000]

MILITARY AND NAVAL INSURANCE POLICY NO. 1

Amount, $5,000. Age, 25.
Monthly installments: $28.75

THE UNITED STATES OF AMERICA, TREASURY DEPARTMENT, BUREAU OF WAR RISK INSURANCE

Under the authority granted by Congress in an act amending "An act entitled 'An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes," approved October 6, 1917, and subject in all respects to the provisions of such act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with this policy, the application therefor, and the terms and conditions published under authority of the act, shall constitute the contract:

Hereby insures from and after the ——— day of ———, 19—, John Doe, of Illinois, private, Company A, Third Infantry, conditioned upon the payment of premiums as herein provided, for the principal amount

of $5,000 converted into monthly installments of $28.75 (the equivalent, when paid for 240 months, of the sum insured, on the basis of interest at the rate of 3½ percent per annum) payable—

To the insured, if he/she, while this insurance is in force, shall become totally and permanently disabled, commencing with such disability as established by the award of the director of the bureau and continuing during such disability; and

To the beneficiary or beneficiaries hereinafter designated, commencing upon the death of the insured, while the insurance is in force, and (except as otherwise provided) continuing for 240 months if no installments have been paid for total and permanent disability or if any such installments have been paid, then for a number of months sufficient to make 240 in all:

To Sarah Doe, wife of the insured—

If no beneficiary within the permitted class be designated by the insured, either in the insured's lifetime or by his last will and testament, or if any above-designated beneficiary is or becomes disqualified or does not survive the insured, the insurance (or if any above-designated beneficiary shall survive the insured, but shall not receive all the installments, then the remaining installments) shall be payable to such person or persons within the permitted class of beneficiaries as would under the laws of the insured's place of residence be entitled to his personal property in case of intestacy.

* * * * * * *

Sections 14, 15 and 19 of the Act of December 24, 1919 (c. 16, 41 Stat. 376–377).[13]

---

[13] Sections 14, 15, and 19 of the Act of December 24, 1919, and Section 26 of the Act of August 9, 1921, are not referred

SEC. 14. That if no person within the permitted class of beneficiaries survive the insured, then there shall be paid to the estate of the insured the monthly installments payable and applicable under the provisions of Article IV of the War Risk Insurance Act.

SEC. 15. That if any person to whom such yearly renewable term insurance has been awarded dies, or his rights are otherwise terminated after the death of the insured, but before all of the two hundred and forty monthly installments have been paid, then the monthly installments payable and applicable shall be payable to such person or persons within the permitted class of beneficiaries as would, under the laws of the State of residence of the insured, be entitled to his personal property in case of intestacy; and if the permitted class of beneficiaries be exhausted before all of the two hundred and forty monthly installments have been paid, then there shall be paid to the estate of the last surviving person within the permitted class the remaining unpaid monthly installments.

SEC. 19. That the amount of the monthly installments of allotment and family allowance, compensation, or yearly renewable term insurance which has become payable

---

to specifically in the brief. They are set forth here because they are the legislative provisions governing the entitlement of the insured's estate to insurance prior to June 7, 1924. It will be noted that under Section 402 of the War Risk Insurance Act of October 6, 1917, no insurance could be paid to the estate of the insured. While that section did provide for payment of the reserve value, if any, to the estate of the insured, yearly renewable term insurance has no reserve value. Converted insurance, also authorized by the Act of October 6, 1917, does have a reserve value.

under the provisions of the War Risk Insurance Act but which has not been paid prior to the death of the person entitled to receive the same may be payable to the personal representatives of the deceased person.

Section 26 of the Act of August 9, 1921 (c. 57, 42 Stat. 156):

> SEC. 26. A new section is hereby added to Article IV of the War Risk Insurance Act (including therein section 14 of the Act entitled "An Act to amend and modify the War Risk Insurance Act," approved December 24, 1919), to be known as section 407, and to read as follows:
>
> "SEC. 407. If no person within the permitted class of beneficiaries survive the insured, then there shall be paid to the estate of the insured the monthly installments payable and applicable under the provisions of Article IV of the War Risk Insurance Act: *Provided*, That in cases where the estate of the insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate of the insured, but shall escheat to the United States and shall be credited to the United States Government life insurance fund or the military and naval insurance appropriation, as may be proper. This section shall be deemed to be in effect as of October 6, 1917."

Section 303 of the World War Veterans' Act of June 7, 1924 (c. 320, 43 Stat. 625):

> SEC. 303. If no person within the permitted class of beneficiaries survive the insured, or if before the completion of payments the beneficiary or beneficiaries shall die and there be no surviving person within said permitted class, then there shall

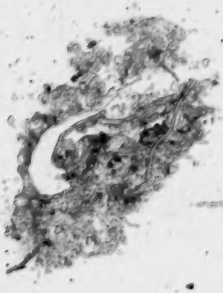
be paid to the estate of the insured, the present value of the monthly installments thereafter payable under the provisions of this title: *Provided,* That in cases where the estate of the insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate of the insured, but shall escheat to the United States and shall be credited to the United States Government life-insurance fund or the military and naval insurance appropriation, as may be proper. This section shall be deemed to be in effect as of October 6, 1917.

Section 303 of the World War Veterans' Act, as amended by the Act of March 4, 1925 (c. 553, 43 Stat. 1310; 38 U. S. C. 514):

SEC. 14. Section 303 of the World War Veterans' Act, 1924, approved June 7, 1924, is hereby amended to read as follows:

"SEC. 303. If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award: *Provided,* That all awards of yearly renewable term insurance which are in course of payment on the date of the approval of this Act shall continue until the death of the person receiving such payments, or until he for-

feits same under the provisions of this Act. When any person to whom such insurance is now awarded dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of the insurance so awarded to such person: *Provided further,* That no award of yearly renewable term insurance which has been made to the estate of a last surviving beneficiary shall be affected by this amendment: *Provided further,* That in cases when the estate of an insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriation. This section shall be deemed to be in effect as of October 6, 1917."



U. S. GOVERNMENT PRINTING OFFICE: 1943